

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

THOMAS D. EDWARDS
Respondent

Case No.: I-00-20444
I-00-20352

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-20444) served by first-class mail, the Government charged Respondent Thomas D. Edwards with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes.¹ The Notice of Infraction alleged that Respondent violated § 700.3 on November 28, 2001 at 2932 Southern Avenue, S.E., and sought a fine of \$1,000.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on January 7, 2002, this

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

administrative court issued an order finding Respondent in default, assessing a statutory penalty of \$1,000 as required by D.C. Official Code § 2-1801.04(a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (00-20352) on January 22, 2002. On January 29, 2002, Respondent filed a timely plea of Deny to the second Notice of Infraction pursuant to D.C. Official Code § 2-1801.02(a)(3), along with a request for a hearing.

An evidentiary hearing was held on April 11, 2002. Norris Goins, the charging inspector in the captioned case, appeared at the hearing on behalf of the Government. Thomas Edwards appeared on behalf of Respondent. Respondent sought leave to amend his plea from Deny to Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2) which was granted without objection by the Government. Respondent also requested a reduction or suspension of any fines or statutory penalties.

As to the substance of the violation, Respondent testified that after receiving the Notice of Infraction he changed his trash hauler, utilized a larger trash receptacle and monitored his trash area more closely to ensure compliance with § 700.3. Respondent further testified that unidentified persons from neighboring buildings routinely dumped their trash on his property. Respondent noted that he had contemplated fencing his trash receptacle, but believed it would be expensive and that such fencing would make it difficult for his trash hauler to gain access. Respondent also noted that he had considered locking his trash receptacle, but believed that trespassers who could not gain access because of the lock would merely leave their trash on or about the receptacle.

As to Respondent's failure to timely answer the first Notice of Infraction, Respondent testified that he never received the first Notice of Infraction. Respondent testified that in December, 2001, he received a plastic container of mail from the United States Postal Service that appeared to have been damaged and discolored from having been sprayed. Respondent testified that he did not open the container, however. Respondent first became aware that he had been issued a Notice of Infraction in January, 2002.

The Government acknowledged there had been incidents of illegal dumping in the area around Respondent's property and recommended that there be a reduction of the authorized fine and statutory penalty.

II. Findings of Fact

1. By his plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 700.3 at 2932 Southern Avenue, S.E. on November 28, 2001.
2. On November 28, 2001, Respondent failed to store and containerize for collection solid wastes in a manner that "will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard" at 2932 Southern Avenue, S.E. 21 DCMR 700.3.
3. Unidentified persons routinely dump their trash in and around Respondent's trash receptacle.
4. Respondent considered fencing his trash receptacle, but believed it would be too expensive to do so, and that it would hamper his trash hauler's ability to gain access to the receptacle. Respondent also considered locking his trash

receptacle, but believed that trespassers who could not gain access to his receptacle because of the lock would merely leave their trash on or about the receptacle.

5. Upon learning of the charged violation of § 700.3 in January, 2002, Respondent changed his trash haulers and began utilizing a larger trash receptacle for his building. Respondent now monitors his trash area more closely to ensure that it is kept clean.
6. Respondent has accepted responsibility for his unlawful conduct.
7. There is no evidence in the record of a prior history of non-compliance by Respondent.
8. Respondent has no recollection of receiving the first Notice of Infraction which was served by the Government by first-class mail on November 29, 2001.² Sometime in December, 2001, Respondent received a plastic container of mail from the United States Postal Service that appeared to have been damaged and discolored from having been sprayed. Respondent did not open the plastic container to determine its contents, however. Respondent first became aware that he had been issued a Notice of Infraction sometime in January, 2002.
9. Respondent has requested a reduction or suspension of any fines or statutory penalties assessed. The Government has recommended that, in light of

² The certificate of service on the back of the Notice of Infraction did not indicate the manner in which it was mailed to Respondent. At the hearing, however, Mr. Goins represented that service had been accomplished by first-class mail.

Respondent's explanation, there be a reduction the authorized fine and statutory penalty.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on November 28, 2001. A fine of \$1,000 is authorized for a first violation of this regulation.³ 16 DCMR §§ 3201.1(a)(1) and 3216.1(b).
2. Respondent has requested a reduction or suspension of the authorized fine. Under these facts, a reduction, although not a suspension, of the authorized fine is appropriate. Respondent's has asserted, and the Government has acknowledged, that unidentified persons routinely dump trash in the area around Respondent's receptacle. Despite this knowledge, Respondent has offered nothing other than mere speculation that securing his receptacle through the use of fencing and/or a lock would make little economic or practical sense.
3. A property owner's mere speculation that efforts to secure his or her trash receptacle from known trespassers will be unsuccessful does not excuse his or her responsibility to comply with the requirements of § 700.3. *See Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 203 (D.C. 1995) (property owner held liable for violation of § 700.3 despite, *inter alia*, his assertion that trespassers dumped trash on his property); *DOH v. Lin*, OAH No. I-

³ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

00-70185, at 2-3 (Final Order, January 29, 2002) (finding conditions leading to violation of § 700.3 “foreseeable and easily preventable” where respondents noted long-standing problem of homeless persons rummaging through their trash, but undertook no efforts to secure trash receptacle); *see also* Fed R. Evid. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter . . .”).

4. In light of Respondent’s acceptance of responsibility, prompt efforts to comply with the requirements of § 700.3 and the lack of a prior history of non-compliance, however, I will reduce the fine to \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.02(b)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.
5. Respondent has also requested a reduction or suspension of the assessed statutory penalty. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).
6. Respondent testified that he never received a copy of the first Notice of Infraction. Respondent also testified that he received a plastic container of damaged mail from the United States Postal Service in December, 2001, sometime after the Government served the first Notice of Infraction on November 29, 2001. I credit Respondent’s explanation as to the delay of his receipt of mail around the time of

the Government's service of the first Notice of Infraction. Moreover, the Government has not suggested, nor do I conclude, that under the circumstances it was unreasonable for Respondent not to have opened the plastic container of damaged and discolored mail he received from the United States Postal Service in December, 2001.⁴

7. Accordingly, I find that Respondent has established good cause for failing to timely respond to the first Notice of Infraction, and will vacate the statutory penalty assessed by this administrative court's order of January 7, 2002.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that the statutory penalty of \$1,000 assessed by this administrative court's order of January 7, 2002 is hereby **VACATED**; and it is further

ORDERED, that Respondent shall pay a fine in the amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

⁴ At the hearing, I took judicial notice of the impact of biological terrorism on the United States mail system in the Washington, DC area in the aftermath of the tragic events of September 11, 2001, without objection from the Government. *See* Fed. R. Evid. 201(b),(e).

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/17/02**

Mark D. Poindexter
Administrative Judge